

CLARK COUNTY, NEVADA

IBLA 76-703 Decided December 8, 1976

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring divestiture of title to lands granted under the Recreation and Public Purposes Act (Nev-043487).

Affirmed.

1. Patents of Public Lands: Generally—Recreation and Public Purposes Act

A grantee's failure to develop for an unreasonable period of time (over 19 years) lands patented under the Recreation and Public Purposes Act constitutes a violation of the reversionary clause in the patent which states that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

APPEARANCES: James N. Bartley, County Counsel, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Clark County, Nevada, appeals from the July 9, 1976, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring that appellant's failure to develop part of the lands patented to it by Patent No. 1162526 (Nev-043487), issued July 26, 1956, pursuant to the Recreation and Public Purposes Act, 43 U.S.C. § 869 et seq. (1954), constituted a violation of the reversionary clause of the patent. 1/ BLM therefore ruled that appellant was divested

1/ The original patent covered 53 parcels of land. BLM approved the subsequent transfer of title to several parcels to other organizations. The decision appealed from applies only to those parcels listed therein to which appellant retains title and which were undeveloped. They are as follows: Mount Diablo Meridian, Nevada, T. 21 S., R. 61 E., sec. 35, lots 24, 25; T. 22 S., R. 61 E.,

of title to the undeveloped lands and that the title reverted in the United States.

Appellant argues that the BLM decision is in error for three reasons: (1) BLM does not have the authority to administratively cancel a patent; (2) nonuse of the land is not grounds for reversion; and (3) nonuse is not unauthorized use, or use other than that specified.

The Recreation and Public Purposes Act authorizes the Secretary of the Interior to dispose of public lands to states, counties, etc., for recreational or public purposes, provided the receiving organization shows that the land will be used for an established or definitely proposed project. 43 U.S.C. § 869 (1954). The Act also requires that patents issued under it contain a clause that if, during the 25 years after issuance of patent, the lands are devoted to a use other than that for which the lands were conveyed, title shall revert to the United States. 43 U.S.C. § 869-2 (1954).

The patent issued to appellant stated that the land was to be used for the following purposes:

* * * fire and police stations, public parks, playgrounds, hospitals, schools, recreational sites, auditoriums, garages, warehouse and storage, libraries, administrative sites, health facilities, civil defense installations and other civic-public uses only * * *.

The patent also contained the reversionary clause required by the Act.

In 1967 BLM conducted a field examination of the lands which showed that development had taken place on only a few of the parcels of land. Appellant was informed of this finding and was asked to show cause why title should not revert to the United States. Appellant responded by stating that the land was obtained for use when needed and that the timing of development depended upon the rate of growth of the County. A second field examination, conducted in 1975, revealed that much of the land still remained undeveloped.

fn. 1 (continued)

sec. 6, lots 30, 40, 41, 63, 78, 83, 87, 89; sec. 8, lots 5, 7, 8, 26;

sec. 10, lots 26, 27; sec. 16, lots 1, 4, 8, 28, 39, 43, 61, 70, 72, 107; sec. 20, lots 11, 12, 15, 16, 29, 49, 63, 77, 78; sec. 28, lots 5, 12, 30, 56, 57, 80, 81, 90, 97.

BLM then issued its decision declaring the title to the undeveloped lands revested in the United States.^{2/}

[1] The arguments presented by appellant were directly answered by this Board in City of Monte Vista, Colorado, 22 IBLA 107 (1975), and in Clark County School District, 18 IBLA 289, 82 I.D. 1 (1975). In those decisions, the Board held that the requirement of a "definitely proposed project" placed a continuing obligation upon the grantee to follow through with its plan of development within a reasonable period of time. City of Monte Vista, Colorado, supra at 115-16; Clark County School District, supra at 302-04, 82 I.D. at 7-8. Further, the Board held that nonuse of the land for an unreasonable period violates the patent provision that the land not be devoted to a use other than that for which it was conveyed. City of Monte Vista, Colorado, supra at 117; Clark County School District, supra at 304-05, 82 I.D. at 8. We adhere to the majority views in those cases.

The facts in appellant's case are no different than the facts in the Board's earlier decisions. The period of nonuse by appellant, over 19 years, is longer than the period in Clark County (over 17 years) and in City of Monte Vista (over 18 years). We conclude that BLM acted correctly in informing appellant that it had violated the reversionary provision of its patent, that it was therefore divested of title to the undeveloped lands, and that the title revested in the United States.

Appellant's argument concerning BLM's lack of authority to cancel a patent administratively is not relevant. Appellant erroneously confuses case authority for the proposition that patents may not be canceled administratively with this declaration of divestiture and reversion of title in the United States, and with judicial enforcement of rights. The cases referred to by appellant involve cancellation of patents for fraud or other error in issuance. Those cases in no way limit the authority, and indeed the duty, of this Department to determine administratively whether the conditions of the Recreation and Public Purposes Act and the patent for reverter of title have occurred, and to give notice to the patentee of this determination so it may exercise the opportunity afforded for administrative appellate review. Therefore, the case is returned to BLM to undertake appropriate action to remove the cloud on the title of the United States to these lands.

^{2/} We note that the Nevada State Office issued a separate decision on July 9, 1976, declaring the Clark County School District divested of title to certain lands and the United States revested with title. Title to these lands was originally patented to the County under the patent at issue here and then transferred to the School District with BLM approval. However, the School District has not appealed and that decision stands as final.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

